



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201247018**
Release Date: 11/23/2012
Date: August 30, 2012
UIL Code: 501.32-00
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 26, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = individual
C = individual
D = individual
O = state
P = date
r = dollar amount
s = dollar amount
t = dollar amount
u = dollar amount

UIL:

501.32-00
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Facts

You were formed as a corporation on date P in O for charitable, religious, educational and scientific purposes under section 501(c)(3) of the Code. Your initial board of directors was four people, of which three were related (B, C and D). You expanded to seven directors, of which four are still related. Your Bylaws, section 4.2, indicates that the initial board of directors, consisting of B, C and D, shall have permanent terms that will not expire. You have stated that you intend on expanding your board again, at a later date, but provided no time frame.

You will provide safe, caring, unique and affordable childcare tutoring services at a home-based location for students between the ages of 4 and 18. Initially, you project three students taking part in your services; only five students at most are allowable in your facility. Of those five students you project two will be children of board members of your board. Currently, you have no students, no enrollment forms, no materials to provide to potential students, and have indicated you are three to five years from realistically contracting for tutoring services. You plan on working with other similar organizations in O with respect to public outreach and for startup. Updated brochures or booklets with current information about the organization were not provided.

You will cover subjects such as math, language and reading, spelling, science, music and social studies. Although you have stated you are not a school, and are only providing tutoring, you submitted a detailed daily schedule running from 8:00AM to 5:00PM, including a break for lunch and snacks. Your curriculum development is primarily an in-house project, and there are no budgeted amounts for fee expenditures in this area. B is the sole instructor of your program and you have stated B will not be compensated for her work.

You will utilize a large room in the home of B and C, two of your directors, as your facility. You submitted a residential lease between B, C and an unrelated landlord, but a lease for your use of the facility was not provided. The commercial lease shows a monthly rental rate of s dollars. This room has been dedicated to tutoring services, and you have 'majority' use of the room during the specified hours above. You were unaware of any state or local licensing or inspection requirements for its facility.

You have stated 10% of the total rent and utilities of the home is paid by you based on a pro-forma projection you deemed to be reasonable for the projected small number of participants. Initially, your budgets showed an annual expense of t dollars for occupancy. You then revised this amount to u dollars, then back to t dollars. The amount you are projecting for occupancy expenses is approximately 86% of the rent you currently pay. You have no other specified expenses but stated that all fees are directly associated with the operation of the tutoring services. Most of the planning done to date is limited to a projected enrollment of only three to five students and one

instructor.

You charge a monthly fee of r dollars to participants, good for eight hours of daily instruction, five days a week. You later clarified this statement that participants do not partake in full day services and the fee was standard only for budgeting purposes. Revised financials demonstrate a fee of \$20/hour per student. You indicate that this amount was determined by comparing other rates for similar services in the area and surrounding counties and using data gathered from various resources such as other tutoring entities.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable and educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Treasury Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Revenue ruling 69-175, 1969-1 CB 149, states that a nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 72-369 states that an organization which provides consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. The reason is because furnishing services at cost lacks the donative element necessary to establish this activity as charitable, and it is a commercial type of operation not one which serves a public purpose.

In the case of B.S.W. Group v. Commissioner of Internal Revenue Service 70 T.C. 352 a corporation which planned to offer consulting services for a fee to both nonprofit and

commercial for-profit entities was denied exemption under IRC section 501(c)(3) since it did not operate exclusively for charitable, educational or scientific purposes.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973). The Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for section 501(c)(3) exempt purposes. Specifically, the facts above indicate that you are operated for the private benefit of a limited number of students receiving personal tutoring services, and more specifically, those related to your founders. You are also operating out of the residence of B and C, for which you pay a share of the costs. You do not meet the operational test for exemption under Section 1.501(c)(3)-1(a)(1) because your income inures to your directors, and you are operated for the private benefit of your directors.

You are not described in Section 1.501(c)(3)-1(c)(2) because you are operated for the private benefit of E,F and G and your earnings inure to them in the form of costs paid for your facility. You have stated reasonable costs are charged for use of the facility, however, you are projecting occupancy expenses that are almost as much as monthly rental charges alone for the use of 'the majority' of one room.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You will provide home tutoring to, at most, five children, of which two are projected to be related to your governing body. You provide this service from the home of B and C, and are using all of your income to pay for the rent and expenses for one room out of this location.

You are similar to the organization described in Revenue Ruling 69-175 because you enable participating parents (including board members) to fulfill their individual responsibility by providing full time tutoring in what appears to be a home school environment. You have projected three students in your first year of operations. Two of these are projected to be related. At most, you will be providing services to three students from the general public. In serving such a limited amount, including related parties, you are providing a private rather than a public service.

You are similar to the organizations described in Revenue Ruling 72-369 and B.S.W Group v. Commissioner because you plan to charge sufficient fees to show a profit or breakeven akin to a commercial enterprise. Any revenues will be used to pay the occupancy expenses of the private residence of B and C, your executive director and secretary.

You are like Old Dominion Box Co because you are operating for the benefit of private parties, specifically B and C, as well as two other related directors.

Applicant's Position

You stated that you were formed for exclusively charitable purposes including the advancement of education. You also seek to obtain the IRC section 501(c)(3) exempt status because the organization will create a home based educational framework which will be geared towards youth with genuine comradeship among the administrative personnel.

Service Response to Applicant's Position

You do not qualify for IRC section 501(c)(3) exempt status because of substantial private benefit to individual persons. Control rests within one family and at least two of the five children enrolled initially will be children of board members. Conflicting statements were provided with respect to tuition revenues, occupancy expenses and salary or compensation amounts for B, your executive director. Although tutoring advances education the structure under which you are operating serves private rather than public good outweighing any 501(c)(3) purposes.

Conclusion

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You serve the private interests of your board members and participating parents rather than public interests. Thus, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding

to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.
If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892